

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN
MADISON DIVISION**

STANDARD PROCESS INC.,	:	
	:	Case No: 3:18-cv-00849-wmc
Plaintiff,	:	
	:	
v.	:	Judge William M. Conley
	:	
AVC INFINITE, LLC, A VITAMIN A	:	Magistrate Judge Stephen L. Crocker
DAY LLC, ANDREW CHEKAYEV,	:	
IRINA PEYSAKHOVICH, and JOHN	:	
DOES 1-100, individually or as	:	
corporate/business entities,	:	
	:	
Defendants.	:	

**DECLARATION OF JASON WELLS IN SUPPORT OF PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT AND PERMANENT INJUNCTION**

I, Jason Wells, make the following declaration in support of Standard Process, Inc.'s ("Standard Process") Motion for Default Judgment Against Defendants AVC Infinite, LLC, A Vitamin A Day, LLC, Andrew Chekayev, and Irina Peysakhovich in the above-captioned matter.

1. I am the Chief Technology Officer at Pattern, Inc. ("Pattern"), a Utah corporation. I have personal knowledge of the facts in this Declaration and, if called as a witness, could and would testify to such facts under oath.

2. Pattern was previously known as iServe Products Inc. ("iServe"), and changed its name to Pattern in 2018.

3. Pattern owns and operates an online marketplace monitoring service called TriGuardian. TriGuardian monitors listings and sales of products on the online marketplace

www.amazon.com ("Amazon") and collects data related thereto. Pattern offers the TriGuardian monitoring service to its customers.

4. As part of my duties, I am responsible for the operation of TriGuardian.

5. Through TriGuardian, a company can set up monitoring for all of its products that are being offered for sale on Amazon, including monitoring of all storefronts that are offering the company's products and the prices at which all storefronts are offering the company's products for sale. Once the monitoring is in place, TriGuardian collects data regarding the company's products that are listed for sale on Amazon.

6. Among other things, TriGuardian monitors product listings throughout the day to learn which storefront has been selected by Amazon as the occupant of the "Buy Box" for specific products. When there are multiple storefronts offering the same product for sale, Amazon uses an algorithm that selects a single storefront as the occupant of the Buy Box. The Buy Box, which can be occupied by many different storefronts within a single day, is highly prized by sellers on Amazon because it is prominently placed on Amazon's product listing pages. Consumers who click the "Add to Cart" button on Amazon product listing pages will begin the process of purchasing a product from the storefront in the Buy Box, whereas consumers are able to purchase products from storefronts that do not occupy the Buy Box only by clicking a small link that takes the consumer to a page that lists other storefronts that are selling the product. Because of how the Amazon interface favors the Buy Box, the vast majority of products that are purchased on Amazon are purchased from storefronts that are in the Buy Box.

7. Through its monitoring, TriGuardian calculates the effective percentage of time that each storefront offering a product for sale "held" the Buy Box each day. In making this calculation, TriGuardian considers the amount of time that it observed a storefront in the Buy Box

through its monitoring but also considers additional factors such as what time of day the storefront held the Buy Box. As an example, a storefront that occupied the Buy Box only from approximately midnight to 8:00 a.m. would generally be calculated as holding the Buy Box for less than 33% of a day, even though the storefront held the Buy Box for 8 hours of a 24-hour day, because data shows that consumers purchase fewer products during overnight hours than they purchase during daytime hours.

8. TriGuardian also calculates how many units of products are sold on Amazon during a day. On Amazon, products are identified by unique numbers called ASINs. Each discrete product is assigned a separate ASIN. When there are multiple storefronts selling the same ASIN, consumers may purchase the ASIN from more than one storefront within the same day. This is especially likely if multiple storefronts hold the Buy Box within the same day.

9. TriGuardian calculates how many total products of the same ASIN were sold in a day by compiling various data. First, TriGuardian looks at how many units of the ASIN are sold by known sellers in a given day and the effective percentage of time that known sellers held the Buy Box that day to extrapolate how many total units were sold by all storefronts selling the ASIN. For example, if a known seller sold 5 units during a day in which it effectively held the Buy Box for 50% of the time, using this data alone TriGuardian would generally calculate that approximately 10 units were collectively sold by all storefronts selling the ASIN. However, TriGuardian also considers other data in calculating total units sold such as product rankings that are publicly available through Amazon and various attributes of each storefront that is selling an ASIN.

10. Through these calculations, TriGuardian is able to estimate how many units of a specific ASIN were sold by a specific storefront on each day that TriGuardian's monitoring has

been in place. TriGuardian estimates this number by multiplying the total number of units of an ASIN that were sold in a day by the effective percentage of time the storefront held the Buy Box during that day, as well as applying additional adjustments through a proprietary formula. This produces an estimate of how many units of the ASIN were sold by a storefront on each day.

11. TriGuardian is also able to estimate the revenue earned by storefronts through sales of specific products. As part of its monitoring, TriGuardian records the prices at which a storefront is offering products for sale. To calculate revenue, TriGuardian multiplies a storefront's price for a given product by TriGuardian's estimate of how many units the storefront sold in a day. For example, if a product was offered by a storefront for \$25 per unit and TriGuardian estimated that the storefront sold 8 units on a specific day, the storefront's revenue from sales of the product on that day would be \$200.

12. Pattern also sells products on Amazon and uses TriGuardian to monitor its own product listings and sales on Amazon.

13. TriGuardian's estimates of a storefront's sales volume and revenue have been tested by comparing the TriGuardian estimates for Pattern against Pattern's actual sales volume and revenue. This testing has determined that TriGuardian produces very accurate estimates of a storefront's sales volume and resulting revenue. The margin of error has been determined to be 10%.

14. Plaintiff hired Pattern's predecessor company, iServe, before October 1, 2017 to use TriGuardian to monitor the listings of all of Plaintiff's products ("Standard Process Products") on Amazon. Pattern continues to provide Plaintiff with the monitoring service.

15. In connection with this matter, I was directed by Plaintiff to pull data collected by TriGuardian from October 1, 2017 to May 1, 2019 related to the listings and sales of Standard

Process Products on Amazon through storefronts called “Vitaminpro” and “I & G Brothers” also known as “Stroke of Luck”, “Best of NH”, “Limitless Vitamins”, “Atetrans”, and “Valvar V” (the “Storefronts”).

16. Working at my direction and under my supervision, a colleague pulled data that includes data regarding the listings of all Standard Process Products that were offered for sale through the Storefronts, including the products listed and the prices at which they were listed on each day from October 1, 2017 to May 1, 2019. Data was also pulled regarding the effective percentage of time that the Storefronts held the Buy Box for each Standard Process Product, and TriGuardian's resulting estimates of how many Standard Process Products were sold by the Storefronts on each day from October 1, 2017 to May 1, 2019. A printout of a spreadsheet containing this data is attached hereto as Attachment A to this declaration.

17. The first numbered page of Attachment A (following the Table of Contents) contains a summary list of the total sales through the Storefronts from October 1, 2017 to May 1, 2019. The summary shows that the total sales of all Standard Process Products sold through the Storefronts from October 1, 2018 to May 1, 2019 were \$35,114.55. The second and third pages break out the sales through the “Vitaminpro” and “I & G Brothers” storefronts, respectively.

18. The data supporting the figures on the first three pages of Attachment A are contained in the subsequent pages of Attachment A. For example, page 4 provides the supporting data for the product "B0006IID64: Standard Process - Catalyn - Vitamins A, B6, C, D, Thiamin, Riboflavin, Whole Food Based Ingredients - 360 Tablets." The first column identifies the Storefront that sold the product, and the second column identifies the week for which data was collected. The third column identifies the product name and the fourth column identifies the ASIN that was assigned to the product by Amazon (B0006IID64). The fifth column shows TriGuardian's

calculation of the percentage of time the identified Storefront held the Buy Box for that product on each day. The sixth column shows TriGuardian's calculation of the number of units of the product that were sold by the Storefront on each day. The seventh column shows the price at which the Storefront listed the product on each day. The eighth column shows TriGuardian's calculation of the total revenue the Storefront earned from sales of the product on each day.

19. For the " B0006IID64: Standard Process - Catalyn - Vitamins A, B6, C, D, Thiamin, Riboflavin, Whole Food Based Ingredients - 360 Tablets" product, TriGuardian calculates that the Storefronts' total sales from October 1, 2017 to May 1, 2019 were \$1,819.16.

20. The data for each of the other Standard Process Products that were sold by the Storefronts from October 1, 2017 to May 1, 2019 is contained in the other pages included in Attachment A.

21. The total sales for each Standard Process Product that was sold through the Storefronts are listed in the summary on the first page of Attachment A. The Storefronts earned revenue from sales of 43 different Standard Process Products between October 1, 2017 to May 1, 2019.

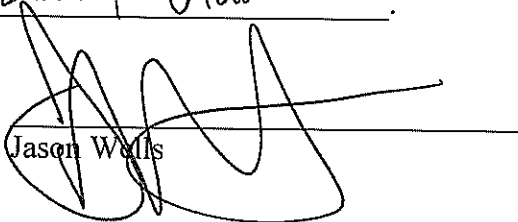
22. Based on my work and experience with the TriGuardian monitoring system and the testing that has been done to verify its accuracy, it is my belief that \$35,114.55 is a reasonably certain calculation of the Storefronts' total sales of Standard Process Products from October 1, 2017 to May 1, 2019. Of those sale, the "Vitaminpro" storefront accounted for 380 products sold for a total of \$16,782.15 and the "I & G Brothers" storefront accounted for 365 products sold for \$18,332.40.

23. Based on my work and experience with the TriGuardian monitoring system and the testing that has been done to verify its accuracy, it is my belief that the Storefronts sold 745 total units of Standard Process Products from October 1, 2017 to May 1, 2019.

I declare under penalty of perjury under the laws of Colorado, Wisconsin, and the United States of America that the foregoing is true and correct.

Executed on May 24, 2019, in Lehi, Utah.

By:


Jason Wells